THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 22001 of 2005

O r d e r:

Aggrieved by the action of the respondents in not granting him Family Planning Incentive, the petitioner filed the present writ petition.

The petitioner joined the service of the respondents as Conductor in 1996. While working as such, respondent No.2, namely, the Depot Manager, Banaganapalli, Kurnool District, vide orders dated 21.06.1999, removed the petitioner from service. The said order of removal, was even confirmed in appeal by orders dated 07.10.1999 of the Deputy Chief Traffic Manager, Kurnool. However, in the review petition filed by the petitioner, respondent No.1, namely, the Regional Manager, Kurnool, vide orders dated 31.12.1999, modified the order of removal passed by respondent No.2, as confirmed by the Deputy Chief Traffic Manager, Kurnool, to the effect that the petitioner shall be considered as afresh Conductor. In pursuance of the said order, the petitioner joined the service of the respondents. While the petitioner was out of service, his wife underwent Family Planning Operation 29.06.1999. Therefore, immediately after joining service of the respondents as afresh Conductor, the petitioner made representation to the respondents seeking grant of Family Planning Incentive, but the same was rejected on the ground that as on the date when his wife underwent Family Planning Operation, he was out of service. Hence, he filed the present writ petition.

The learned counsel for the petitioner submitted that the petitioner's wife underwent Family Planning Operation on 29.06.1999, and having regard to Circular No. PD-56/1984-85, dated 14.09.1984, the petitioner is entitled to for grant of Family Planning Incentive, and the action of the respondents in rejecting the representation of the petitioner for grant of Family Planning Incentive, is illegal and arbitrary.

On the other hand, the learned Standing Counsel for the respondents, reiterating the averments made in the counter submitted that as on the date when the petitioner's wife underwent Family Planning Operation, the petitioner was not in service, for he stood removed by orders of the Depot Manager, and the Circular No. PD-56/84-85, dated 14.09.1984, on which the petitioner has placed reliance, is applicable only to those persons who are in service, and as such, no exception can be taken to the action of the respondents in rejecting the representation of the petitioner for grant of Family Planning Incentive.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

There is no dispute doubt that the petitioner's wife underwent Family Planning Operation on 29.06.1999, but the fact remains that as on the date when his wife underwent Family Planning Operation, the petitioner was not in service, for he stood removed from service by order dated 21.06.1999 of respondent No.2, which was even confirmed in appeal by orders dated 07.10.1999 of the Deputy Chief Traffic Manager, Kurnool. Though respondent No.1, taking a lenient view, vide his orders dated 31.12.1999, modified the orders of removal passed by respondent No.2 against the petitioner, as confirmed by the Deputy Chief Traffic Manager, and in pursuance of which, the petitioner joined the service of the respondents as Conductor, the fact remains respondent No.1, ordered that the petitioner shall be considered afresh Conductor and the period of absence from the date of his removal to till he reports for duty shall be treated as not on duty for the purpose of leave and wages. Thus, it is clear that from 21.06.1999, on which date the petitioner was removed from service to till 31.12.1999, when he was ordered to be treated as fresh Conductor, the petitioner was not in service. The petitioner's wife, admittedly, during the period, he was out of service, underwent Family Planning Operation on 29.06.1999, and the petitioner not being in employment of the respondents when his underwent Family Planning Operation, the provisions of Circular
No. PD-56/1984-85, dated 29.06.1984, placing reliance on which the petitioner contends that he is entitled to be granted Family Planning Incentive, is not applicable to the petitioner, for the said Circular is applicable only to those employees, who by themselves or through their spouses, have undergone Family Planning Operation, while in employment with the respondents.

Had respondent No.1, while modifying the order of respondent No.2, as confirmed by the Deputy Chief Traffic Manager, ordered reinstatement of the petitioner into service with continuity of service in stead of treating him as afresh Conductor, then the petitioner would have been justified in seeking grant of Family Planning Incentive, but that is not the case on hand. Since respondent No.1 ordered that the petitioner shall be treated as afresh Conductor, and he having not been extended the benefit of continuity of service from the date of his removal till he was ordered to be treated as afresh Conductor, and his period of absence from the date of removal to till he reports for duty, has been directed to be treated as not on duty, and the petitioner's wife having underwent Family Planning Incentive during the period he was out of service, no exception can be taken to the action of the respondents in rejecting the representation of the petitioner for grant of Family Planning Incentive.

The writ petition is devoid of merit, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 20th June, 2006.

KSR